

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

PRISTON JAMES ADAMS,

Defendant and Appellant.

F078218

(Super. Ct. No. F18900931)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. John F. Vogt and James A. Kelley, Judges. †

Michele A. Douglass, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Michael A. Canzoneri, and Barton Bowers, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

* Before Detjen, Acting P.J., Franson, J. and Smith, J.

† Judge Vogt presided at the plea hearing. Judge Kelley presided at the sentencing hearing.

Appellant Priston James Adams pled no contest to first degree burglary (Pen. Code, §§ 459, 460, subd. (a)/count 1)¹ and he admitted a prior prison term enhancement (§ 667.5, subd. (b)) and allegations that a person other than an accomplice was present during the burglary (§ 667.5, subd. (c)(21)).

On July 30, 2018, the court stayed the one-year prior prison term enhancement and sentenced Adams to a two-year prison term.

On appeal, Adams contends: (1) the matter must be remanded because the trial court failed to establish a factual basis for his plea; and (2) the court imposed an unauthorized sentence when it stayed his prior prison term enhancement. We find merit to Adams's second contention and strike the enhancement. In all other respects, we affirm.

FACTS

On February 2, 2018, a family went to the house they were moving into and found a window broken and Adams inside wearing numerous articles of clothing belonging to members of the family. Adams was subsequently detained by a neighbor and held for sheriff's deputies. The deputies searched Adams and found him in possession of .287 grams of methamphetamine and other property belonging to the family.

On February 6, 2018, the Fresno County District Attorney filed a complaint that charged Adams with possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)/count 2) in addition to the burglary charge and other allegations he pled to.

On June 27, 2018, Adams entered his plea, as noted above, in exchange for a lid of three years and the dismissal of the drug possession charge and two unrelated misdemeanor cases. During the change of plea proceedings, defense counsel and the district attorney both stipulated to a factual basis for Adams's plea to the burglary charge,

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

the allegation that someone other than an accomplice was present during the burglary, and the prior prison term enhancement. Based on the parties' stipulation, the court found a factual basis for Adams's plea. However, neither the parties nor the court identified a specific document that described the circumstances of Adams's burglary offense.

On July 30, 2018, the court stayed the prior prison term enhancement and sentenced Adams to prison for the mitigated term of two years on his burglary conviction.

DISCUSSION

The Factual Basis of the Plea

Adams contends that because the facts of his offense are not described anywhere in the record, the court failed to establish a factual basis for his plea.² Thus, according to Adams, in accordance with section 1192.5, the matter must be remanded for the prosecutor to do so. We disagree.

Section 1192.5 provides, in relevant part: "Upon a plea of guilty or nolo contendere to an accusatory pleading charging a felony, ... [¶] ... [¶] ... The court shall also cause an inquiry to be made of the defendant to satisfy itself that the plea is freely and voluntarily made, and that there is a factual basis for the plea."

Section 1192.5 requires only that a prima facie factual basis be established for the charge. (*People v. Holmes* (2004) 32 Cal.4th 432, 441 (*Holmes*).) A trial court's factual determination that a prima facie factual basis exists will be overturned only upon a showing of an abuse of discretion. (*Id.* at p. 443.) Further, "[a] finding of error under this standard will qualify as harmless where the contents of the record support a finding of a factual basis for the conditional plea." (*Ibid.*)

² The probation report, which contains a detailed recitation of the facts underlying Adams's burglary, was not included in the original record on appeal and was augmented into the record on January 15, 2019, after Adams filed his opening brief. Adams did not file a reply brief.

Although the parties stipulated to a factual basis for Adams's plea, they did not reference any specific documents. Nor did the court make reference to a specific document that contained a factual basis for the plea. However, the probation report contains a detailed recitation of the facts underlying Adams's burglary offense. Thus, any error in the court's failure to obtain a factual basis for Adams's burglary offense was harmless. (*Holmes, supra*, 32 Cal.4th at p. 443.)

The Prior Prison Term Enhancement

Adams contends the court should have stricken, rather than stayed, his prior prison term enhancement. He is correct.

“[W]hen the court imposes a determinate sentence, the imposition of an additional term under section 667.5 is mandatory unless the additional term is stricken.” (*People v. White Eagle* (1996) 48 Cal.App.4th 1511, 1521.) Further, “[t]he order staying imposition of the prior prison term enhancement is an unauthorized sentence and is subject to correction on appeal.” (*Ibid.*) Accordingly, we will strike the prior prison term enhancement.

DISPOSITION

The judgment is modified to strike the prior prison term enhancement the court stayed. The trial court is directed to prepare an amended abstract of judgment that incorporates this modification and to forward a certified copy to the appropriate authorities. As modified, the judgment is affirmed.